

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Trading income

Chapter 5: Trade profits: rules allowing deductions

Sections 76 to 80: Redundancy payments etc

Overview

310. These five sections are based on the trading income rules relating to redundancy payments in sections 90, 579 and 580 of ICTA. The rules that deal with the employee's liability are in section 309 of ITEPA.
311. The trading income rules were introduced to reverse the decisions in *CIR v Anglo Brewing Co Ltd* (1925), 12 TC 803 and *Godden v A Wilson's Stores (Holdings) Ltd* (1962), 40 TC 161. In those cases the courts held that certain payments to employees on the closing down of a trade were not deductible in arriving at trading profits. In neither case was the payment made in accordance with a pre-existing obligation.
312. In 1999 the Inland Revenue announced (Tax Bulletin 39G, February 1999) that it will be guided by the decision in *Commissioner of Inland Revenue v Cosmotron Manufacturing Co Ltd* (1997), 70 TC 292¹.
313. In that Hong Kong case the Privy Council decided that redundancy payments made under a pre-existing obligation were deductible. Although that decision is merely persuasive in the United Kingdom, the Inland Revenue no longer argue that payments made under a pre-existing obligation (including a statutory obligation) are covered by the *Anglo Brewing* and *Wilson's Stores* decisions. The announcement in Tax Bulletin means that it may not be necessary to give the employer a statutory right to a deduction in calculating trading profits. But these sections put the matter beyond doubt.

¹ STC [1997] 1134